IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO. 1636 OF 2005

The State of Maharashtra,)
through the Additional Chief Secretary (Services))
General Administration Department, Mantralaya,)
Mumbai-400 032.)..Petitioner

Versus

1. Vinay Mohan Lal,)
31, Yashodhan, Dinshaw Vacha Road,)
Mumbai-400 032.)

2. Union of India, through the Secretary,)
Department of Personnel and Training,)
North Block, New Delhi-11.)

3. Principal Secretary (Services),)
General Administration Department,)
Mantralaya, Mumbai-400 032.)

4. Mr. Vilasrao Deshmukh,)
Chief Minister, Maharashtra State,)
Mantralaya, Mumbai-32.)

5. Mr. Satish Tripathi, I.A.S. Secretary,)
Food and Civil Supplies, Govt. of Mahasrashtra,)
Mumbai-400 032.)

6. Principal Secretary,)
Urban Development Department,)
Mantralaya, Mumbai-32.)..
Respondents.

Mr.Ravi Kadam, Advocate General, with Mr. R.M. Sawant, Government Pleader, and Mr. Vijay Masurkar for the petitioner.

Mr. J.P. Cama, Senior Advocate, Mr. R. Shetty and Mr. S.V. Marne for respondent No.1.

None for respondent No.2.

Mr. I.M. Chagla, Senior Advocate, with Mr. Nitin P. Deshpande, Assistant Government Pleader, for respondent No.4.

CORAM: **DALVEER BHANDARI, C.J.** &
DR. D.Y. CHANDRACHUD, J.

DATE: **JULY 04, 2005**.

ORAL JUDGMENT (Per Dalveer Bhandari, C.J.)

1. On the oral request of the learned Advocate General, (i) respondent Nos. 3 and 6 are transposed as petitioner Nos. 2 and 3, and (ii) respondent No.5 is deleted from the array of parties.

2. Rule. Rule is made returnable forthwith. With the consent of parties, the writ petition is taken up for hearing and final disposal forthwith.

3. This petition has been preferred by the State of Maharashtra against the orders dated 1st June, 2005 and 17th June, 2005 passed by the

Central Administrative Tribunal, Bombay Branch ("the Tribunal" for short), in Original Application No. 293 of 2005.

4. Respondent No.1, who was holding the post of Chairman, Third Maharashtra Finance Commission, has been transferred as Managing Director of MAFCO. The grievance of the petitioner is that the transfer is an incident and essential condition of service and the order of transfer could not be interfered with by the Tribunal, except in extremely exceptional circumstances. The grievance of the petitioner-State is that the order dated 1st June, 2005 staying the transfer of respondent No. 1 was an ex-parte order. The petitioner-State submitted that the order of transfer is passed on 24th May, 2005 and respondent No.1 filed an application before the Tribunal for quashing the transfer order on 30th May, 2005, which came up for hearing on 1st June, 2005, and on that day itself, the Tribunal stayed the transfer order. The Tribunal did not deem it necessary even to give one day's notice before staying the transfer order, particularly when the respondent-State is in Mumbai itself. The ad-interim *ex-parte* order granted by the Tribunal was confirmed by the Tribunal by its order dated 17th June, 2005.

5. The petitioner-State before the Tribunal filed reply affidavits on behalf

of respondent Nos. 3 and 6, in which it is clearly stated that transfer is an incident of service and is made according to administrative exigencies. It is also incorporated in the affidavit that there is no *mala fide* intention in the transfer of respondent No.1 nor is there any breach of the prescribed rules. The transfer order has been passed in accordance with law. In the affidavit it was also mentioned that posting of respondent No.1 as Managing Director, MAFCO, does not in any manner affect the service conditions of respondent No.1, that is, year of allotment, promotion, status, pay or otherwise. It is also incorporated that respondent No.1 does not have any right to insist on being posted to any particular post. It is also denied that the transfer order is actuated by any malice. It is also indicated in the affidavit that the Government could have transferred respondent No.1 from the post of Vice-Chairman/Managing Director, City & Industrial Development Corporation of Maharashtra Ltd. (for short "CIDCO"), to some other insignificant post instead of very important post of Chairman, Third Maharashtra Finance Commission, had there been any *mala fide* against him. It is also stated that allegations of *mala fide* against the Government as well as against respondent No.4 are far-fetched and imaginary and the same were specifically denied.

6. It is mentioned in the affidavit that respondent No.1 was posted as

Chairman of the Third Maharashtra Finance Commission. In the meantime, a discreet preliminary enquiry was ordered to investigate the allotment of land/plots in violation of rules and policies during the tenure of respondent No.1. Dr. D.K. Sankaran, ACS, Planning Department, was directed to conduct the preliminary inquiry by the Chief Secretary. He submitted his detailed report in three volumes on 31st March, 2005 to the Government in which he found that there is huge financial loss to CIDCO to the tune of Rs. 347 crores on account of irregularity in allotment of plots/land during respondent No.1's tenure as Chairman of CIDCO. The report clearly indicates the role of respondent No.1 in allotment of plots as Chairperson of CIDCO:-

(i) Arbitrariness and undue haste,

(ii) Misleading the CIDCO Board of Directors by concealment of facts,

(iii) High handedness, i.e., ignoring the advice given by subordinate officers on departure from procedures and laid down rules and caution expressed about loss being accrued to CIDCO,

(iv) Criminal intention to put CIDCO to financial loss by allotting lands at highly concessional prices after forming

nexus with builders and private persons.

7. After considering the report of Dr. D.K.Sankaran, the Government decided to initiate disciplinary proceedings against respondent No.1 under the provisions of AIS (D &A) Rules, 1969, and accordingly a charge-sheet has been issued to him on 2nd June, 2005.

8. Mr. Ravi Kadam, the learned Advocate General appearing for the State, submitted that after receiving the report of Dr. Sankaran, the Government did not think it appropriate that with such serious allegations of irregularities, respondent No.1 should be allowed to continue in a very sensitive and important post as Chairman of the Third Maharashtra Finance Commission. That was the main reason why the transfer order was passed.

9. The learned Advocate General submitted that the Tribunal gravely erred in passing the *ex parte* stay order in a matter of this nature. He submitted that the grant of interim order by the Tribunal is governed by Section 24 of the Administrative Tribunals Act, 1985 (hereinafter referred to as “the Act”). Section 24 of the Act is reproduced as under:-

"**24. Conditions as to making of interim orders.-** Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, an application unless -

(a) copies of such application and of all documents in support of the plea for such interim order are furnished to the party against whom such application is made or proposed to be made; and

(b) opportunity is given to such party to be heard in the matter.

Provided that a Tribunal may dispense with the requirements of clauses (a) and (b) and make an interim order as an exceptional measure if it is satisfied, for reasons to be recorded in writing, that it is necessary so to do for preventing any loss being caused to the applicant which cannot be adequately compensated in money but any such interim order shall, if it is not sooner vacated, cease to have effect on the expiry of a period of fourteen days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the Tribunal has continued the operation of the interim order."

10. It is the mandate of the statute that no interim order shall be made on, or in any proceedings relating to, an application unless copies of such application and of all documents in support of the plea for such interim order are furnished to the party against whom such application is made or proposed to be made; and opportunity is given to such party to be heard in the matter. Admittedly, the order staying the

transfer of respondent No. 1 is an *ex parte* order. The Tribunal, of course, in exceptional circumstances, may dispense with the requirement of clauses (a) and (b) and make an interim order as an exceptional measure if it is satisfied, for reasons to be recorded in writing, that it is necessary so to do for preventing any loss being caused to the applicant which cannot be adequately compensated in money. The Tribunal has not recorded any reasons in its order, as required by Section 24 of the Act. The learned Advocate General submitted that orders of the Tribunal dated 1st June, 2005 and 17th June, 2005 are contrary to the statutory provision and the settled position of law, as has been crystallised in number of judgments of the Apex Court and this Court. We would like to recapitulate the ratio of some of the judgments of the Apex Court and then determine whether the impugned order staying the transfer order is in consonance with the settled position of law.

11. The learned Advocate General placed reliance on the leading case of the Apex Court, *Public Services Tribunal Bar Association* vs. *State of U.P. and another* [(2003) 4 SCC 104] and has particularly drawn our attention to paragraphs 37 and 38 of the judgment in which Their Lordships of the Supreme Court have observed that “transfer is an

incident of service and is made according to the administrative exigencies. Normally it is not to be interfered with by the Court. This Court consistently has been taking a view that orders of transfer should not be interfered with except in rare cases where the transfer has been made in a vindictive manner". The Court further held in paragraph 38 that the Apex Court has "consistently been of the view that by way of an interim order, the order of suspension, termination, dismissal and transfer etc. should not be stayed during the pendency of the proceedings in the Court."

12. Mr. Chagla, learned Senior Counsel appearing on behalf of respondent No.4, while supporting the petitioner also placed reliance on this judgment. He invited our attention to the observation of the Court regarding illegal usurpation of the office. It was submitted that if the order of dismissal, removal, termination and compulsory retirement is set aside, then an employee can be compensated by moulding the relief appropriately in terms of arrears of salary, promotions which may have become due or otherwise compensating him in some other way. But in case the order of dismissal, removal, termination and compulsory retirement is found to be justified then holding of the office during the operation of the interim order would

amount to usurpation of an office which the employee was not entitled to hold. The action becomes irreversible as the salary paid to the employee cannot be taken away as he has worked during that period and the order passed by him during the period he holds office cannot also be put at naught.

13. The learned Advocate General also placed reliance on *Union of India and others* vs. *Janardhan Debanath and another* [(2004) 4 SCC 245]. In this case also, the Apex Court held that whether an employee could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It was held even by the Supreme Court that in such matters, it is not for the Supreme Court to direct one way or the other.

14. The learned Advocate General has also placed reliance on *State of U.P. and others* vs. *Gobardhan* Lal [(2004) 11 SCC 402]. The Apex Court in this case has observed that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed above, shown to be vitiated by *mala fides* or is made in

violation of any statutory provision. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. It is for this reason that the Courts or the Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of *mala fides* when made must be such as to inspire confidence in the court or be based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

15. The Supreme Court in another case of *Kendriya Vidyala Sangathan* vs. *Damodar Prasad Pandey and Ors.* [2004 (8) SCALE 188] has reiterated the position that transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or visited by *mala fide* or infraction of any prescribed norms of principles governing the transfer.

16.Reliance has also been placed on *State of U.P. and another* vs. *V.N. Prasad (Dr.)* [1995 Supp (2) SCC 151]. In this case the Supreme Court observed that at the stage at which the matter was brought to engage the attention of the High Court, there was no *prima facie* material to establish any *mala fides* which required strong and convincing evidence. The presumption is in favour of *bona fides* of the order unless contradicted by acceptable material.

17. In another leading case of *N.K. Singh* vs. *Union of India and Ors.* [(1994) 6 SCC 98], the appellant, an IPS Officer of the State cadre of Orissa was transferred from the post of Joint Director, Central Bureau of Investigation, to the Border Security Force, both of which are Central Police organisations. Apart from *mala fides*, the appellant submitted that transfer was not in public interest. The main grievance of the appellant was that the appellant has been eased out of the sensitive post in CBI as in-charge of the Special Investigation Group investigating into the St. Kitt's affair wherein there were allegations of forgery of some documents and of involvement in that forgery of some persons having political patronage, because of his impeccable reputation as an officer beyond approach. On this basis the transfer of the appellant from CBI to BSF was challenged on the ground of

mala fides attributed mainly to the then Prime Minister of India, Respondent No.2, Shri Chandrashekhar. It was further alleged that the appellant's transfer from the CBI is prejudicial to public interest since it is with a view to scuttle the sensitive investigation. The Apex Court came to the conclusion that mere suspicion or likelihood of some prejudice to public interest is not enough and there must be strong unimpeachable evidence to prove definite substantial prejudice to public interest to make it a vitiating factor in an appropriate case unless it is justified on the ground of larger public interest and exigencies of administration.

18. In the case of *Union of India and Ors.* vs. *H.N. Kirtania* [(1989) 3 SCC 445], the Apex Court had taken the view that the transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of *mala fides.*

19. We have made reference to the aforementioned cases in order to crystallise the legal position and the limited scope which the Tribunals and Courts have in matters of transfer. According to the learned

Advocate General, in the light of aforesaid decisions, the Tribunal was not justified in passing the orders dated 1st June, 2005 and 17th June, 2005.

20. Reverting to the facts of this case, the learned Advocate General submitted that the Maharashtra Finance Commission Act does not specify any tenure. The Government has the discretion. In the instant case, respondent No.1 was granted tenure up to 31st December, 2005. According to the learned Advocate General, the Governor who has the power to appoint respondent No.1 has also power to curtail his tenure and appoint someone else. In the instant case, Mr. Satish Tripathi has been appointed in place of respondent No.1.

21. The learned Advocate General referred to the allegation of respondent No.1 regarding *mala fides*. It is mentioned by respondent No.1 that respondent No.4 was the Chief Minister from October, 1999 to January, 2003 and he was again elected to the said office on 1st November, 2004. During that period, respondent No.1 had incurred his displeasure while working as Principal Secretary, Housing, by raising certain questions on a proposal of slum re-development

scheme. No details whatsoever have been mentioned by respondent No.1 in support of this allegation. This allegation is vague and general in nature.

22. Respondent No.1 also mentioned that when he was working as Vice-Chairman and Managing Director, CIDCO, a proposal for allotment of a plot of land for setting up a newspaper printing press to the son of respondent No.4 could not be approved or got approved by him or by the Board of Directors of CIDCO as it was neither regular nor within their powers to do so. Because of this reason, respondent No. 4 felt offended. This has been specifically denied by the State. Respondent No.4 has also filed separate affidavit before the Tribunal in which it is mentioned that the allegation made is entirely false and baseless. CIDCO had alloted a plot of land for setting up of a printing press to M/s. Amit Publications Pvt. Ltd. in Navi Mumbai area. At the time of allotment, certain conditions were imposed which were not complied with by the said M/s.Amit Publication Pvt. Ltd. as a result of which the allotment stood terminated. Thereafter, the Board of Directors of CIDCO reconsidered the case of allotment of plot to said M/s. Amit Publication Pvt. Ltd. It appears that a proposal was sent to the

Government for considering allotment of land to Amit Publications at a time when respondent No.1 was the Vice-Chairman and Managing Director of CIDCO. However, before the Government could consider the proposal, this Court by its order dated 29th April, 2004 in Writ Petition (Lodging) No. 115 of 2004, ruled out the said allotment along with four other allotments. Thus, respondent No.4 was in no manner responsible for either the cancellation of allotment to Amit Publications or the failure to reallot.

23. Respondent No.1 also levelled allegations regarding imposition of penalty on Manjra Charitable Educational Trust. According to respondent No.1, respondent No.4 had close connection with the said trust. In the reply submitted by respondent No.4, the allegation regarding Manjra Charitable Educational Trust is without any basis or foundation. It is mentioned that the Trust is an independent legal entity and the issue as regards imposition of penalty on the said trust cannot be any basis for alleging *mala fides* against respondent No.4.

24. Mr. Chagla, learned Senior Counsel appearing for respondent No.4, reiterated that the burden of establishing *mala fides* is very heavy on

the person who alleges it and unless he is able to discharge that burden, the Court would not be justified in staying the transfer. Respondent No.1 has not discharged that burden. The allegations levelled by respondent No.1 are totally baseless and without foundation. Respondent No.1 has not been able to establish how respondent No.4 was in any manner responsible for all the allegations levelled by respondent No.1 against respondent No.4. He submitted that the legal position is clear and consistent that in order to place any reliance on such *mala fide,* there has to be a very high degree of proof. In the instant case, respondent No.1 has made reckless allegations without any proof, and the Tribunal was not justified in placing any reliance on those allegations.

25. In support of his submission, Mr. Chagla has placed reliance on a Constitution Bench judgement of the Supreme Court in the case of *E.P. Royappa* vs. *State of Tamil Nadu and another* [(1974) 4 SCC 3]. The basic principles have been crystallised by the Apex Court in the matter of transfers. In the concurring judgement, Bhagwati, J., observed that the petitioner who was Chief Secretary to the Government, State of Tamil Nadu, was on account of various incidents which occurred in the course of administration transferred from the said post. The incidents referred to by the petitioner

constituted gross acts of maladministration and the charge levelled against the second respondent therein was that because the petitioner in the course of his duties obstructed and thwarted the second respondent in the acts of maladministration, that the second respondent was annoyed with him and it was with a view to putting him out of the way and at the same time deflating him that the petitioner was transferred from the post of Chief Secretary. The transfer of the petitioner was, therefore, in *mala fide* exercise of power and accordingly invalid.

26. The Constitution Bench of the Apex Court laid down that the Court must not overlook that the burden of establishing *mala fides* is very heavy on the person who alleges it. The allegations of *mala fides* are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. Here the petitioner, who was himself once the Chief Secretary, has flung a series of charges of oblique conduct against the Chief Minister. The Supreme Court held that that is in itself a rather extraordinary and unusual occurrence and if these charges are true, they are bound to shake the confidence of the people in the political custodians of power in the State and, therefore, the anxiety of the Court should be all the

greater to insist on a high degree of proof. In this context, it was held that it may be noted that top administrators are often required to do acts which affect others adversely but which are necessary in the execution of their duties. These acts may lend themselves to misconstruction and suspicion as to the *bona fides* of their author when the full facts and surrounding circumstances are not known. The Court, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charges of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up. These considerations are wholly irrelevant in judicial approach but because otherwise, functioning effectively would become difficult in our democracy. It is from this stand point that we must assess the merits of the allegations of *mala fides* made by the petitioner against the second respondent.

27.The facts of the instant case are akin to the facts of the

aforementioned case because in the instant case, allegations have been levelled by respondent No.1, who was the Chairman of Third Maharashtra Finance Commission against the Chief Minister. Mr. Chagla has supported the learned Advocate General and reiterated that transfer is an incident of service and unless it is against the statutory rules or grave *mala fides*, it should not be interfered. He submitted that the Tribunal has gravely erred in deviating from the settled position of law. He further submitted that allegations made by respondent No.1 against respondent No.4 are wholly untenable and without foundation. Mr. Chagla also reiterated that in view of Section 24 of the Act, the Tribunal could not have granted ad-interim *ex-parte* stay in a case of this nature.

28. Mr. Chagla further submitted that the allegations regarding slum-dwellers which have been dealt with in preceding paragraph relate to the period prior to 2002. Similarly, allegations regarding Amit Publication Pvt. Ltd. are also of the period December, 2003, and about allegations regarding Manjra Trust, no dates or particulars have been given. These allegations are far-fetched. On the basis of these allegations, the Tribunal could not have legally stayed the order of transfer. He submitted that on 28th December, 2004, General

Administration Department has issued the posting order of respondent No.1 as Chairperson of Third Maharashtra Finance Commission. On 29th December, 2004, the Finance Department immediately moved the proposal for constitution of the Third Finance Commission to the Governor of the Maharashtra as per the procedure laid down in this regard and on 15th January, 2005, the appointment of Respondent No.1 was made as the Chairman of the Third Finance Commission. If there is any iota of truth in the allegations, respondent No.4 would have never permitted respondent No.1 to occupy such an important and coveted position as Chairperson of the Third Finance Commission. According to Mr. Chagla, all these allegations made against Respondent No.4 are motivated and have been levelled for extraneous considerations.

29. Mr. Cama, the learned counsel appearing for respondent No.1, supported the orders passed by the Tribunal dated 1st and 17th June, 2005. He submitted that respondent No.1 has been harassed on a number of occasions by frequent transfers. In four and a half years, respondent No.1 was transferred on seven occasions. Mr. Cama submitted that respondent No.1 was appointed for a fixed tenure i.e. up to 31st December, 2005, and his tenure could not be curtailed

without following the procedure laid down in Section 6 of the Administrative Tribunals Act. He further submitted that even the Governor could not curtail his tenure without following the procedure laid down in Section 6 of the Act.

30. Mr. Cama placed reliance on a decision of the Apex Court in *Debesh Chandra Das* vs. *Union of India [*1969 (2) SCC 158]. In the said case the appellant was a member of the Indian Civil Service and was allotted to the State of Assam. In 1940, he came on deputation to the Government of India and became in turn Under Secretary and Deputy Secretary. In 1947 he went back to Assam where he held the post of Development Commissioner and Chief Secretary. In 1951, he again came to Government of India on deputation as Secretary, Public Service Commission. From 1955 till 1961, he was Joint Secretary to the Government of India and from 1961 to 1964, he was Managing Director of Central Warehousing Corporation. On July 29, 1964, he was appointed Secretary to Government of India until further orders and this was approved by the Appointments Committee of the Cabinet. On July 20, 1966, the Cabinet Secretary wrote to him stating that as a result of the examination of the names of those occupying

top level administrative posts with a view to ascertaining their capability to meet new challenges, the Government decided that he should revert to his parent State or to proceed on leave preparatory to retirement or to accept some post lower than that of Secretary to Government. He represented his case to the Cabinet Secretary and the Prime Minister. On September 7, 1966, he was informed that after considering his oral and written representations, the Government had decided that his services should be placed at the disposal of his parent State, Assam, or in case he decided to proceed on leave preparatory to retirement he was asked to inform. At the time of filing of writ petition he was appointed as Special Secretary under one of his Juniors although he was next to the Cabinet Secretary in seniority.

31. The appellant treated these orders as reduction in his rank for the reasons that (i) the pay of an I.C.S. Secretary to Government of India is Rs.4,000/- per mensem and the highest pay in Assam for an I.C.S. is Rs.3,500/- per mensem and there being no equal post in Assam his reversion to Assam meant a reduction in his emolument and in rank, (ii) he held a year's tenure post expiring on July 29, 1969 but was wrongly terminated before the expiry of 5 years; there was a stigma

attached to his reversion as was clear from the three alternatives which the letter of the Cabinet Secretary gave him; and (iii) this being the case the order was sustainable as the procedure under Article 311 (2) of the Constitution of was not followed. His appeal was dismissed by the Calcutta High Court. This case has no relevance as far as the case in hand is concerned. Admittedly, transfer of respondent No.1 does not affect the service condition of respondent No. 1, either year of allotment, promotion, status, pay or otherwise. Therefore, the reliance on the said case is totally misplaced.

32. Reliance has also been placed on the decisions of the Apex Court in (i) *Surya Dev Rai* vs. *Ram Chander Rai and others* [(2003) 6 SCC 675) and (ii) *State of Haryana and others* vs. *Rajindra Sareen* [(1972) 1 SCC 267]. We have carefully considered these cases. These cases, in our opinion, have no application whatsoever as far as the controversy involved in the instant case is concerned.

33. Mr. Chagla has drawn our attention to Original Application No. 293 of 2005 and mentioned that in paragraph 4.1, respondent No.1 has mentioned that he held various posts during his long and distinguished career viz. Principal Secretary in the Departments of

(i) Energy and Environment, (ii) Housing, (iii) Revenue and (iv) Home; Chairman, Maharashtra State Electricity Board, Transport Commissioner, Govt. of Maharashtra, General Manager, Bombay Electricity Supply and Transport Undertaking, Municipal Commissioner, Pune, apart from the Central deputation extending to nearly six years in the Ministry of Shipping and Transport, Government of India, New Delhi. He did not mention a word against these transfers. On the contrary he had incorporated the averments of this para to demonstrate that respondent No.1 held many important positions. He had not mentioned anything in the said application about any of these transfers. As a matter of fact, all these transfers were on high positions. Therefore, we find no substance in any of respondent No.1's allegations that respondent No.1 was harassed and was transferred on a number of occasions as a measure of harassment. We also do not find any merit in the allegations levelled by respondent No.1 against respondent No.4 for the detailed reasons indicated in preceding paragraphs.

34. As laid down in Royappa's case (supra), the Courts and Tribunals must bear in mind the fact that the allegations of *mala fide* are often more easily made than proved, and the seriousness of such

allegations demands proof of a high order of credibility. Since that heavy burden is not discharged by the person, who alleges *mala fides*, it would be dangerous to rely on such *mala fides* and pass an order on those mere allegations. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charge of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up. These considerations are wholly irrelevant in judicial approach but because otherwise, functioning effectively would become difficult in our democracy. In the instant case, respondent No. 1 has made allegations against respondent No. 4, a sitting Chief Minister of the State. In our considered view, the Tribunal ought not to have stayed the order of transfer. When orders dated 1st and 17th June, 2005 are evaluated in the light of the crystallised legal position, this Court is left with no option but to set aside both the orders, being contrary to the legal position. The Tribunal did not issue any notice to the State to meet the reckless allegations levelled by respondent No. 1 against

respondent No. 4, before the initial ex-parte order was passed.

35. The impugned orders passed on 1st and 17th June, 2005 are unsustainable for the following reasons:-

(a) The orders are contrary to the settled position of law as crystallized in number of afore-mentioned judgments of the Supreme Court.

(b) The transfer of respondent No. 1 from one post to another in Mumbai itself cannot be termed as punitive, requiring interference by the Tribunal particularly when the transfer had neither affected respondent No.1 financially or otherwise.

© The transfer order does not affect the service condition of respondent No. 1, either year of allotment, promotion, status, pay or otherwise.

(d) The impugned orders are clearly violative of the letter and spirit of Section 24 of the Act. No *ex parte* or interim

order can be passed without affording an opportunity to such party to be heard in the matter, except in very exceptional cases, for reasons to be recorded in writing. The Tribunal neither made out an exceptional case, nor recorded the reasons for passing an *ex parte* order, staying the transfer, in writing.

(e) The Tribunal's finding that transfer order is bad, because no reasons have been given, is wholly untenable. The State is under no obligation to give reasons for the transfer of its Administrative Officers.

(f) The Tribunal's finding on transfer is not in public interest and is contrary to the available material on record, because of grave irregularities and illegalities that are alleged to have happened when respondent No. 1 was functioning as the Chairman, CIDCO.

(g) After receiving findings of Dr. Sankaran Committee, which indicates that loss to the tune of Rs. 347 crores was caused to CIDCO because of the irregularities and

illegalities, for which respondent No. 1 was responsible, the transfer of respondent No. 1 became absolutely imperative. Retaining respondent No. 1 in a sensitive and important position would not have been in the larger public interest. In a case of this nature, the Tribunal ought not to have stayed the transfer order even without giving one day's notice to the State.

(h) The Apex Court has ruled that even if the transfer order is in transgression of administrative guidelines, it cannot be legally enforceable, unless the same is shown to be vitiated by *mala fides* or the same is in violation of any statutory provision. In the instant case there has been no infraction of any rule or even propriety.

(i) The allegations levelled by respondent No. 1 do not inspire confidence. This fact is clearly established, because respondent No. 1 became the Chairperson of the Third Maharashtra Finance Commission (on 15th January, 2005) when respondent No. 4 was the Chief Minister (from 1st November, 2004). In case the Chief Minister had

any annoyance, ill-will or malice against respondent No. 1, then, respondent No. 1 could have never become the Chairperson of the Third Finance Commission. The Tribunal gravely erred in placing reliance on such casually mentioned allegations, which cannot stand judicial scrutiny.

36. Before parting with this judgment, we would like to mention that Mr. Satish Tripathi, I.A.S,. has been appointed as the Chairman of Third Finance Commission in place of respondent No.1 on 24th May, 2005. This has received the approval of the Governor.

37. In our view, after notice, when the learned Advocate General appeared before the Tribunal and produced all the records before the Tribunal, instead of passing the order on interim application, it ought to have disposed of the Original Application. Since the Original Application has not yet been disposed of, we set aside both the orders of the Tribunal dated 1st June and 17th June, 2005 and direct the Tribunal to dispose of Original Application No. 293 of 2005 in accordance with law, without being influenced by whatsoever has been stated in this order.

38. Rule is made absolute accordingly. No order as to costs.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.